

Practitioner's Docket No. U 015302-5

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00140

PATENT TRADEMARK OFFICE

CHAPTER II

**TRANSMITTAL LETTER
TO THE UNITED STATES ELECTED OFFICE (EO/US)
(ENTRY INTO U.S. NATIONAL PHASE UNDER CHAPTER II)**

PCT/ES03/00063 3 FEBRUARY 2003 4 FEBRUARY 2002
INTERNATIONAL APPLICATION NO. INTERNATIONAL FILING DATE PRIORITY DATE CLAIMED

METHOD OF PRODUCTION OF ASTAXANTHIN BY FERMENTATION OF SELECTED
STRAINS OF *XANTHOPHYLLOMYCES DENDRORHOUS*

TITLE OF INVENTION

APPLICANT(S)

| | |
|----------------------------------|------------------------------|
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Mail Stop PCT
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
ATTENTION: EO/US

CERTIFICATION UNDER 37 C.F.R. 1.10*

(Express Mail label number is mandatory.)

(Express Mail certification is optional.)

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date July 14, 2004, in an envelope as "Express Mail Post Office to Addressee," Mailing Label Number EV481669292 US, addressed to the: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

CONNIE YANNOTTI

(type or print name of person mailing paper)

Signature of person mailing paper

WARNING: Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

***WARNING:** Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).
"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

NOTE: To avoid abandonment of the application, the applicant shall furnish to the USPTO, not later than the expiration of 30 months from the priority date: (1) a copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the USPTO; and (2) the basic national fee (see 37 C.F.R. § 1.492(a)). The 30-month time limit may not be extended. 37 C.F.R. § 1.495(a) and (b).

WARNING: Where the items are those which can be submitted to complete the entry of the international application into the national phase are subsequent to 30 months from the priority date the application is still considered to be in the international state and if mailing procedures are utilized to obtain a date the express mail procedure of 37 C.F.R. § 1.10 must be used (since international application papers are not covered by an ordinary certificate of mailing - See 37 C.F.R. § 1.8).

NOTE: Documents and fees must be clearly identified as a submission to enter the national state under 35 USC 371 otherwise the submission will be considered as being made under 35 USC 111. 37 C.F.R. § 1.494(f).

1. Applicant herewith submits to the United States Elected Office (EO/US) the following items under 35 U.S.C. 371:
 - a. ☒ This express request to immediately begin national examination procedures (35 U.S.C. 371(f)).
 - b. ☒ The U.S. National Fee (35 U.S.C. 371(c)(1)) and other fees (37 C.F.R. § 1.492) as indicated below:
 - c. ☐ **ADDED PAGES FOR APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED**

2. Fees

| CLAIMS FEE * | (1) FOR | (2) NUMBER FILED | (3) NUMBER EXTRA | (4) RATE | (5) CALCULATIONS |
|-----------------|---|---------------------|---------------------|--------------|--------------------------|
| | TOTAL CLAIMS* | 27- 20 = | 7 | x \$ 18.00 = | NOT PAID AT THIS TIME |
| | INDEPENDENT CLAIMS* | 1- 3 = | | x \$ 86.00 = | |
| | MULTIPLE DEPENDENT CLAIM(S) (if applicable) + \$290.00 | | | | NOT PAID AT THIS TIME |
| BASIC FEE** | <p>[] U.S. PTO WAS INTERNATIONAL PRELIMINARY EXAMINATION AUTHORITY Where an International preliminary examination fee as set forth in § 1.482 has been paid on the international application to the U.S. PTO:</p> <p>[] and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness) and industrial activity, as defined in PCT Article 33(2) to (4) have been satisfied for all the claims presented in the application entering the national stage (37 CFR 1.492(a)(4)) \$100.00</p> <p>[] and the above requirements are not met (37 CFR 1.492(a)(1)) \$730.00</p> <p>[X] U.S. PTO WAS NOT INTERNATIONAL PRELIMINARY EXAMINATION AUTHORITY Where no international preliminary examination fee as set forth in § 1.482 has been paid to the U.S. PTO, and payment of an international search fee as set forth in § 1.445(a)(2) to the U.S. PTO:</p> <p>[] has been paid (37 CFR 1.492(a)(2)) \$770.00</p> <p>[X] has not been paid (37 CFR 1.492(a)(3)) \$1,080.00</p> <p>[] where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office (37 CFR 1.492(a)(5))\$920.00</p> | | | | |
| | Total of above Calculations | | | | = \$1,080.00 |
| SMALL ENTITY | Reduction by ½ for filing by small entity, if applicable. Statement may also be filed. (note 37 CFR 1.9, 1.27, 1.28) | | | | - |
| | Subtotal | | | | \$ 1,080.00 |
| | Total National Fee | | | | \$ 1,080.00 |
| | Fee for recording the enclosed assignment document \$40.00 (37 CFR 1.21(h)). (See Item 13 below). See attached "ASSIGNMENT COVER SHEET". | | | | |
| TOTAL | Total Fees enclosed | | | | \$ 1,080.00 |

*May include Preliminary Amendment (see page 8) reducing the number of claims.

- i. ☒ A check in the amount of 1,080.00 to cover the above fees is enclosed.
- ii. ☐ Please charge Account No. 12-0425 in the amount of \$ _____.
 A duplicate copy of this sheet is enclosed.

****WARNING:** "To avoid abandonment of the application the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date: * * * (2) the basic national fee (see § 1.492(a)). The 30-month time limit may not be extended." 37 C.F.R. § 1.495(b).

WARNING: If the translation of the international application and/or the oath or declaration have not been submitted by the applicant within thirty (30) months from the priority date, such requirements may be met within a time period set by the Office. 37 C.F.R. § 1.495(b)(2). The payment of the surcharge set forth in § 1.492(e) is required as a condition for accepting the oath or declaration later than thirty (30) months after the priority date. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than thirty (30) months after the priority date. Failure to comply with these requirements will result in abandonment of the application. The provisions of § 1.136 apply to the period which is set. Notice of Jan. 3, 1993, 1147 O.G. 29 to 40.

☐ Assertion of Small Entity Status

- ☐ Applicant hereby asserts status as a small entity under 37 C.F.R. § 1.27 by.
 - ☐ a Statement or Written Assertion attached.
 - ☐ fee payment

NOTE: 37 C.F.R. § 1.27(c) deals with the assertion of small entity status, whether by a written specific declaration thereof or by payment as a small entity of the basic filing fee or the fee for the entry into the national phase as states:

"(c) Assertion of small entity status. Any party (person, small business concern or nonprofit organization) should make a determination, pursuant to paragraph (f) of this section, of entitlement to be accorded small entity status based on the definitions set forth in paragraph (a) of this section, and must, in order to establish small entity status for the purpose of paying small entity fees, actually make an assertion of entitlement to small entity status, in the manner set forth in paragraph (c)(1) or (c)(3) of this section, in the application or patent in which such small entity fees are to be paid.

(1) Assertion by writing. Small entity status may be established by a written assertion of entitlement to small entity status. A written assertion must:

- (i) Be clearly identifiable;
- (ii) Be signed (see paragraph (c)(2) of this section); and
- (iii) Convey the concept of entitlement to small entity status, such as by stating that applicant is a small entity, or that small entity status is entitled to be asserted for the application or patent. While no specific words or wording are required to assert small entity status, the intent to assert small entity status must be clearly indicated in order to comply with the assertion requirement.

(2) Parties who can sign and file the written assertion. The written assertion can be signed by:

- (i) One of the parties identified in §§ 1.33(b) (e.g., an attorney or agent registered with the Office), §§ 3.73(b) of this chapter notwithstanding, who can also file the written assertion;
- (ii) At least one of the individuals identified as an inventor (even though a § 1.63 executed oath or declaration has not been submitted), notwithstanding §§ 1.33(b)(4), who can also file the written assertion pursuant to the exception under §§ 1.33(b) of this part;
 or

(iii) *An assignee of an undivided part interest, notwithstanding §§ 1.33(b)(3) and 3.73(b) of this chapter, but the partial assignee cannot file the assertion without resort to a party identified under §§ 1.33(b) of this part.*

(3) *Assertion by payment of the small entity basic filing or basic national fee. The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), (f), (g), (h), or (k), or one of the small entity basic national fees set forth in §§ 1.492(a)(1), (a)(2), (a)(3), (a)(4) or (a)(5), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing or basic national fee is inadvertently selected in error.*

(i) *If the Office accords small entity status based on payment of a small entity basic filing or basic national fee under paragraph (c)(3) of this section that is not applicable to that application, any balance of the small entity fee that is applicable to that application will be due along with the appropriate surcharge set forth in §§ 1.16(e) or §§ 1.16(f).*

(ii) *The payment of any small entity fee other than those set forth in paragraph (c)(3) of this section (whether in the exact fee amount or not) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small entity status in an application or a patent."*

3. ☒ A copy of the International application as filed (35 U.S.C. 371(c)(2)):

NOTE: Section 1.495 (b) was amended to require that the basic national fee and a copy of the international application must be filed with the Office by 30 months from the priority date to avoid abandonment "The International Bureau normally provides the copy of the international application to the Office in accordance with PCT Article 20. At the same time, the International Bureau notifies applicant of the communication to the Office. In accordance with PCT Rule 47.1, that notice shall be accepted by all designated offices as conclusive evidence that the communication has duly taken place. Thus, if the applicant desires to enter the national stage, the applicant normally need only check to be sure the notice from the International Bureau has been received and then pay the basic national fee by 30 months from the priority date." Notice of Jan. 7, 1993, 1147 O.G. 29 to 40, at 35-36. See item 14c below.

- a. ☐ is transmitted herewith.
- b. ☐ is not required, as the application was filed with the United States Receiving Office.
- c. ☒ has been transmitted
 - i. ☒ by the International Bureau.
Date of mailing of the application (from form PCT/IB/308): _____.
 - ii. ☐ by applicant on _____
Date

4. ☒ A translation of the International application into the English language (35 U.S.C. 371(c)(2)):

- a. ☒ is transmitted herewith.
- b. ☐ is not required as the application was filed in English.
- c. ☐ was previously transmitted by applicant on _____
Date
- d. ☐ will follow.

NOTE: 37 C.F.R. § 1.495(c): "If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits . . . a translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)) . . . applicant will be so notified and given a period of time within which to file the translation . . . in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of thirty months after the priority date . . . A 'Sequence Listing' need not be translated if the 'Sequence Listing' complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b)."

5. ☒ Amendments to the claims of the International application under PCT Article 19 (35 U.S.C. 371(c)(3)):

NOTE: The Notice of January 7, 1993 points out that 37 C.F.R. § 1.495(a) was amended to clarify the existing and continuing practice that PCT Article 19 amendments must be submitted by 30 months from the priority date and this deadline may not be extended. The Notice further advises that: "The failure to do so will not result in loss of the subject matter of the PCT Article 19 amendments. Applicant may submit that subject matter in a preliminary amendment filed under section 1.121. In many cases, filing an amendment under section 1.121 is preferable since grammatical or idiomatic errors may be corrected." 1147 O.G. 29-40, at 36.

NOTE: 37 C.F.R. § 1.495(d): "A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of thirty months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of thirty months from the priority date will be considered to be canceled."

- a. ☐ are transmitted herewith.
 - b. ☐ have been transmitted
 - i. ☐ by the International Bureau.
Date of mailing of the amendment (from form PCT/IB/308): _____.
 - ii. ☐ by applicant on _____
Date
 - c. ☒ have not been transmitted as
 - i. ☒ applicant chose not to make amendments under PCT Article 19.
Date of mailing of Search Report (from form PCT/ISA/210): May 20, 2003.
 - ii. ☐ the time limit for the submission of amendments has not yet expired.
The amendments or a statement that amendments have not been made will be transmitted before the expiration of the time limit under PCT Rule 46.1.
6. ☒ A translation of the amendments to the claims under PCT Article 19 (38 U.S.C. 371(c)(3)):
- a. ☐ is transmitted herewith.
 - b. ☐ will follow
 - c. ☐ is not required as the amendments were made in the English language.
 - d. ☒ has not been transmitted for reasons indicated at point 5(c) above.
7. ☒ A copy of the international examination report (PCT/IPEA/409)
- ☒ is transmitted herewith.
 - ☐ is not required as the application was filed with the United States Receiving Office.
8. ☒ Annex(es) to the international preliminary examination report
- a. ☒ is/are transmitted herewith.
 - b. ☐ is/are not required as the application was filed with the United States Receiving Office.

- a. ☒ is transmitted herewith.
- b. ☐ is not required as the annexes are in the English language.

NOTE: 37 C.F.R. § 1.495(c): "If applicant complies with paragraph (b) of this section before expiration of **thirty** months from the priority date but omits . . . the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1, applicant will be so notified and given a period of time within which to file the . . . oath or declaration in order to prevent abandonment of the application The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of **thirty** months after the priority date."

Other document(s) or information included:

11. ☒ An International Search Report (PCT/ISA/210) or Declaration under PCT Article 17(2)(a):
- a. ☒ is transmitted herewith.
- b. ☐ has been transmitted by the International Bureau.
Date of mailing (from form PCT/IB/308): _____.
- c. ☐ is not required, as the application was searched by the United States International Searching Authority.
- d. ☐ will be transmitted promptly upon request.
- e. ☐ has been submitted by applicant on _____.
Date
12. ☒ An Information Disclosure Statement under 37 C.F.R. 1.97 and 1.98:
- a. ☐ is transmitted herewith.
Also transmitted herewith is/are:
☐ Form PTO-1449 (PTO/SB/08A and 08B).
☐ Copies of citations listed.
- b. ☒ will be transmitted within THREE MONTHS of the date of submission of requirements under 35 U.S.C. 371(c).
- c. ☐ was previously submitted by applicant on _____.
Date

13. ☐ An assignment document is transmitted herewith for recording.

A separate ☐ "COVER SHEET FOR ASSIGNMENT (DOCUMENT) ACCOMPANYING NEW PATENT APPLICATION" or ☐ FORM PTO 1595 is also attached.

14. ☒ Additional documents:
- a. ☒ Copy of request (PCT/RO/101)
 - b. ☒ International Publication No. WO 03/066875 A1
 - i. ☒ Specification, claims and drawing
 - ii. ☐ Front page only
 - c. ☐ Preliminary amendment (37 C.F.R. § 1.121)
 - d. ☒ Other

PCT/IPEA/401 (DEMAND); PCT/IPEA/408 (WRITTEN OPINION)
REPLY TO WRITTEN OPINION DATED APRIL 29, 2004
FURTHER REPLY TO WRITTEN OPINION DATED MAY 11, 2004
FORM PCT/IB/306; PCT/IPEA/416

15. ☒ The above checked items are being transmitted
- a. ☒ before 30 months from any claimed priority date.
 - b. ☐ after 30 months.
16. ☐ Certain requirements under 35 U.S.C. 371 were previously submitted by the applicant on _____, namely:

AUTHORIZATION TO CHARGE ADDITIONAL FEES

WARNING: *Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges if extra claims are authorized.*

NOTE: *"A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. § 1.136(a)(3).*

NOTE: *"Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. § 1.26(a).*

☒ The Commissioner is hereby authorized to charge the following additional fees that may be required by this paper and during the entire pendency of this application to Account No. 12-0425.

☒ 37 C.F.R. 1.492(a)(1), (2), (3), and (4) (filing fees)

WARNING: *Because failure to pay the national fee within 30 months without extension (37 C.F.R. § 1.495(b)(2)) results in abandonment of the application, it would be best to always check the above box.*

☐ 37 C.F.R. 1.492(b), (c) and (d) (presentation of extra claims)

NOTE: *Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 C.F.R. § 1.492(d)), it might be best not to authorize the PTO to charge additional claim fees, except possible when dealing with amendments after final action.*

☒ 37 C.F.R. 1.17 (application processing fees)

☒ 37 C.F.R. 1.17(a)(1)-(5)(extension fees pursuant to § 1.136(a).

☒ 37 C.F.R. 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. 1.311(b))

NOTE: *Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of a Notice of Allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the notice of allowance. 37 C.F.R. § 1.311(b).*

NOTE: *37 C.F.R. 1.28(b) requires "Notification of any change in loss of entitlement to small entity status must be filed in the application . . . prior to paying, or at the time of paying . . . issue fee." From the wording of 37 C.F.R. § 1.28(b): (a) notification of change of status must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity.*

☐ 37 C.F.R. § 1.492(e) and (f) (surcharge fees for filing the declaration and/or filing an English translation of an International Application later than 30 months after the priority date).

☒ Please credit any overpayments to deposit account 12-0425.


SIGNATURE OF PRACTITIONER

Reg. No.: 25,858

WILLIAM R. EVANS

(type or print name of practitioner)

Tel. No.: (212) 708-1930

P.O. Address

Customer No.: 00140

c/o Ladas & Parry LLP
26 West 61st Street
New York, N.Y. 10023